



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unicom System, Inc.

File: B-222601.4

Date: September 15, 1986

DIGEST

1. Protest alleging that a contractor cannot know the skill level of unknown government office workers, for whom solicitation states that instructions for telephone system must be written, is untimely when filed after the closing date for initial proposals, since failure to define workers' capability is an alleged defect apparent on the face of the solicitation.
2. When agency advises protester that its proposal is unacceptable and that the agency will neither negotiate further nor request a best and final offer, a protest requesting further negotiations must be filed within 10 working days of receipt of the rejection letter.
3. In appropriate circumstances, protesters may delay filing until after a debriefing. They are, however, required to pursue diligently the information on which their protests are based, including a debriefing. A delay of 54 days between the date of a letter advising the protester that the agency will provide a debriefing and the date of the protester's letter requesting a debriefing does not constitute diligent pursuit.
4. Agency's consideration of an untimely protest to it is irrelevant to the timeliness of a protest to the General Accounting Office (GAO), since an agency may not waive the timeliness requirements of GAO's Bid Protest Regulations.

DECISION

UNICOM SYSTEMS, INC. protests the rejection of its proposal for portable key telephone systems for the Army Recruiting Command. The 7th Signal Command, Fort Ritchie, Maryland, issued the solicitation, No. DAEA08-86-R-0033, on March 7, 1986, contemplating a fixed-price requirements contract for a minimum of 25 and a maximum of 2,500 telephone sets and accessories.

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We dismiss the protest, primarily because UNICOM did not diligently pursue the information that provided the basis for it.

UNICOM submitted its proposal by the April 18 due date. The Army evaluated it, along with 19 others, to determine whether it met all requirements of the performance work statement. The solicitation stated that proposals would be rated either acceptable or unacceptable, with award to the lowest-priced offeror that met all technical, management, and logistical requirements.

After establishing a competitive range of two, the Army, by letter dated May 16, advised UNICOM that its proposal was unacceptable. According to the letter, the rejection was based upon solicitation section L.13, which stated that standard brochures might be submitted as addendum material, but not as the primary proposal, and that written responses, containing substantive information, were required for each paragraph of the performance work statement. The letter also stated that the Army would not conduct further negotiations with or request a best and final offer from the protester, but would provide a debriefing upon written request.

UNICOM requested a debriefing by letter dated July 9, and the Army provided it on July 16. UNICOM protested to the Army by letter dated July 21, stating that its proposal complied with each of several specific paragraphs of the performance work statement. UNICOM also argues that the Army should have further defined a requirement of paragraph 3.5 of the performance work statement, which required the contractor to provide instructions for installation, programming, and operation of each telephone system, written "in a manner to be understood and used by an office worker possessing average office skills." UNICOM argues that it should not have been penalized, as it learned in its debriefing that it had been, for failure to meet this requirement, because a contractor does not have knowledge of the average office skills of unknown government workers.

The contracting officer formally denied the protest by letter dated August 4, following which UNICOM protested to our Office. Essentially, UNICOM argues that its technical proposal was fully compliant; that a standard owner's guide provided with its proposal was merely an addendum, not its primary proposal; that the Army should not have based its rejection on an unwritten definition of average office skills; and that in any case, all key systems require a minimum level of knowledge for installation and maintenance and are based on the assumption that trained personnel will

perform these tasks, because warranties will otherwise become void. The protester requests that we direct the Army to reissue the solicitation and specifically define the skill level of an average office worker or, alternatively, that the Army permit UNICOM to participate in negotiations and submit a best and final offer.

To the extent that UNICOM is protesting the Army's failure to define the capability of the average office worker, the protest is untimely. This was an alleged defect apparent on the face of the solicitation, and UNICOM was required to protest it before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1986).

As for the protest concerning rejection of its proposal, UNICOM either knew the basis for the protest when it received the Army's May 16 letter or should, at that time, have diligently sought the information that provided the basis for the protest.

The Army's May 16 letter clearly provided UNICOM with notice that the agency found its proposal unacceptable. UNICOM knew at least two reasons for this finding, i.e., that in the Army's view, it had submitted standard brochures as a primary proposal and had failed to provide satisfactory responses for each paragraph of the performance work statement. It also knew that the Army did not intend to negotiate further with it. If we regard the May 16 letter as sufficient to establish a basis of protest, neither UNICOM's filing with the agency on July 21 nor with our Office on August 18 is timely, since the firm was required to challenge the Army's findings within 10 working days of receipt of the rejection letter. 4 C.F.R. §§ 21.2(b)(2) and (3).

In appropriate circumstances, protesters may delay filing until after a debriefing. See, e.g., Tandem Computers, Inc., B-221333, Apr. 14, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 362 (protest based on information regarding awardee's proposal, first revealed at debriefing, is timely when filed within 10 working days thereafter); Intelcom Educational Servs., Inc., B-220192.2, Jan. 24, 1986, 86-1 CPD ¶ 83 (protest regarding evaluation of cost proposal, which protester first learned of at debriefing, is timely when filed within 10 working days thereafter). Protesters are, however, required to pursue diligently the information on which their protests are based. This includes diligently pursuing a debriefing, so that they may determine whether they in fact have a basis for protest, and if so, what it is. Id.

We do not consider UNICOM's delay of 54 days--from the May 16 date of the rejection letter to the July 9 date of the letter requesting a debriefing--to be diligent pursuit. The record does not reveal that UNICOM made any attempt during this period to learn additional details as to why the Army had found its proposal unacceptable. See Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384; Knox Mfg. Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281.

Moreover, the fact that the Army considered and responded to UNICOM's agency-level protest is irrelevant, since an agency may not waive the timeliness requirements of our Bid Protest Regulations. Ardrox, Inc., B-221241.2, Apr. 30, 1986, 86-1 CPD ¶ 421.

Protest dismissed.



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